

## **Assembly Bill No. 649**

### **CHAPTER 402**

An act to amend Section 1094.5 of the Code of Civil Procedure, to add Sections 22508.6, 22717.5, and 22801.5 to the Education Code, to amend Sections 18670, 19175, 19582, 19816.20, 19876.5, 20395, 20405.1, 21159, 21160, 21161, 21195, and 22825.01 of, to add Sections 19576.6, 20309.5, and 20407.5 to, and to repeal Section 22754.2 of, the Government Code, and to amend Section 10295 of the Public Contract Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 2000. Filed  
with Secretary of State September 11, 2000.]

On this date I have signed AB 649 with a reduction.

This bill would appropriate funding for various programs agreed to during collective bargaining. However, the appropriation in this bill for the special fund deficiency is in excess of the amount needed to fund the employee compensation increases agreed to through collective bargaining. Therefore, I am reducing the special fund appropriation contained in this bill by \$17,000,000 to reflect the actual amount needed to fund the employee compensation increases. The revised appropriation shall be \$30,600,000.

GRAY DAVIS, Governor

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 649, Machado. State employees.

(1) Under existing law, members of the Defined Benefit Program of the State Teachers' Retirement Plan who become employed by any of a list of other public employers to perform service that requires membership in a different public retirement system, may elect to be excluded from membership in that different system and continue to have their service subject to their existing system.

This bill would make this election available to members of the State Teachers' Retirement System who became employed by the state, during a specified period, to perform service subject to Second Tier benefits in the Public Employees' Retirement System and who satisfy certain requirements. The bill would require persons making that election to make specified contributions to the Teachers' Retirement Fund with respect to their pre-election state service and would also require specified assets to be transferred from the Public Employees' Retirement System to that fund on account of that state service, thereby making an appropriation to the Teachers' Retirement Fund, a continuously appropriated fund.

(2) Under existing law, members of the Defined Benefit Program of the State Teachers' Retirement Plan are entitled to service credit

at service retirement for accumulated and unused leave of absence for illness or injury, as specified.

This bill would provide that members who are eligible state employees and who retire on or after January 1, 2000, shall receive, subject to the terms of a memorandum of understanding or the authorization of the Department of Personnel Administration, service credit at service retirement for accumulated unused leave of absence for education, as specified.

(3) Existing law includes procedures for disciplining state employees, including State Personnel Board investigations and hearings, the review of administrative decisions, and suspensions.

This bill would provide that certain of these procedures do not apply to state employees in State Bargaining Unit 11 who have been disciplined for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement. The bill would require the state employer, if the collective bargaining agreement has expired and an answer has been filed, to follow the appeal procedures contained in the expired memorandum of understanding for state employees in State Bargaining Unit 11 until a successor agreement is negotiated.

(4) Existing law, the Public Employees' Retirement Law, establishes the Public Employees' Retirement System, and sets forth the provisions for its administration and the delivery of benefits to its members. Member contributions to the Public Employees' Retirement System are deposited into the Public Employees' Retirement Fund, which is a continuously appropriated fund. Existing law includes in the state safety membership category state employees in state bargaining units that have agreed in a memorandum of understanding between the state employer and the recognized employee organization that the classifications or positions of these state employees are found to meet specified state safety membership criteria, if the Department of Personnel Administration has agreed to their inclusion. Existing law excludes from the state peace officer/firefighter membership category security officers employed by the Department of Justice.

This bill would include state employees excluded from the Ralph C. Dills Act and officers or employees of the executive branch of state government who are not members of the civil service within the classification of state safety members, if the department has approved their inclusion, and would delete the exclusion of security officers employed by the Department of Justice from the classification of state peace officer/firefighter members. To the extent the bill would enlarge the class of persons eligible for state safety or state peace officer/firefighter membership, it would make an appropriation by increasing the amount of contributions to the Public Employees' Retirement Fund.



(5) Existing law establishes the Rural Health Care Equity Trust Fund, which is administered by the Department of Personnel Administration to provide subsidies and reimbursements for certain health care premiums and health care costs incurred by state employees and annuitants in rural areas on or after January 1, 2000. The fund ceases to be operative on January 1, 2005, or earlier, as specified. Existing law requires each fund in the State Treasury to reimburse the General Fund for specified contributions to the Rural Health Care Equity Trust Fund for the employees and annuitants paid from each fund.

This bill would change references to the fund to the Rural Health Care Equity Program and specify the means by which the General Fund reimbursements are to be made.

(6) Existing law, the Public Employees' Retirement Law, provides increased industrial disability retirement benefits for certain state membership categories who are incapacitated for the performance of their present duties as a result of injury or illness arising out of and in the course of their employment on or after January 1, 1993.

This bill would provide that these provisions do not apply to a job-related or job-incurred illness or injury that occurs on or after January 1, 2000. The bill would declare the intent of the Legislature that these provisions be given retroactive effect to January 1, 2000.

(7) Under the Public Employees' Retirement Law, specified officers and employees of the State Department of Mental Health are classified as state safety members, however, those members have the option to irrevocably elect, within a specified time period, to remain subject to the miscellaneous membership classification.

This bill would provide that a specified group of those officers and employees who elected to remain subject to the miscellaneous membership classification shall have the right to elect to become safety members, as specified.

(8) Existing law, the Public Employees' Medical and Hospital Care Act, provides health benefits plan coverage to public employees and annuitants meeting the eligibility requirements prescribed by the Board of Administration of the Public Employees' Retirement System.

This bill would revise the definition of "eligible employees" for the purposes of the act to delete a definition applicable only to state employees in State Bargaining Unit 19.

(9) Existing law, with specified exceptions, provides that all contracts entered into by any state agency for the hiring or purchase of goods and services, including equipment, supplies, textbooks, and repair or maintenance, are void unless approved by the Department of General Services. Contracts entered into by the Department of Personnel Administration for employee benefits, occupational health and safety, training services, or any combination thereof, for state

employees in state bargaining units that have agreed to this exemption in a memorandum of understanding are exempt from this approval requirement.

This bill would revise this provision to make it applicable to all contracts, with specified exceptions, entered into by any state agency for the acquisition of goods and services. The bill would expand the exemption for contracts entered into by the Department of Personnel Administration for employee benefits, occupational health and safety, training services, and any combination thereof, for state employees, as specified.

(10) This bill would appropriate \$65,414,288 from the General Fund and unallocated special funds, in specified amounts, for allocation for various state employee benefits or programs, including state employee compensation, the Work and Family Fund, and the Rural Area Health Subsidy Program.

(11) This bill would incorporate additional changes in Section 10295 of the Public Contract Code proposed by AB 1441, to become operative if both this bill and AB 1441 are enacted and become effective on or before January 1, 2001, and this bill is enacted last.

(12) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1094.5 of the Code of Civil Procedure is amended to read:

1094.5. (a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to Section 68511.3 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise



directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local Hospital District Law, Division 23 (commencing with Section 32000) of the Health and Safety Code or governing bodies of municipal hospitals formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of the Government Code, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.

(e) Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such



further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h) (1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.



(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency that issues licenses pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (b) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(i) Any administrative record received for filing by the clerk of the court may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

(j) Effective January 1, 1996, this subdivision shall apply to state employees in State Bargaining Unit 5. This subdivision shall apply to state employees in State Bargaining Unit 8. For purposes of this section, the court is not authorized to review any disciplinary decisions reached pursuant to Section 19576.1 or 19576.5 of the Government Code.

(k) This section shall not apply to state employees in State Bargaining Unit 11 disciplined or rejected on probation for positive drug test results who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a State Bargaining Unit 11 collective bargaining agreement.

SEC. 2. Section 22508.6 is added to the Education Code, to read:

22508.6. (a) Any person who is a member of the Defined Benefit Program and who subsequently became employed and continues to be employed by the state to perform service that requires membership in the Public Employees' Retirement System and who meets the requirements of subdivision (b) may elect to have that state service subject to coverage by the Defined Benefit Program and



excluded from coverage by the Public Employees' Retirement System.

(b) (1) Only a person who has achieved program vesting shall be eligible to make the election under this section.

(2) A person is eligible to make the election if he or she left employment with a school district, county superintendent of schools, or community college district and began employment with the state within 30 days without any intervening employment and that change in employment occurred on or after July 1, 1991, and prior to the effective date of this section.

(3) A person is eligible to make the election if, at the time of the election, he or she is a member of the Public Employees' Retirement System subject to Second Tier benefits and is one of the following:

(A) Represented by a State Bargaining Unit that has agreed by a memorandum of understanding to become subject to Section 20309.5 of the Government Code.

(B) Excluded from the definition of "state employee" in subdivision (c) of Section 3513 of the Government Code, but performing, supervising, or managing work similar to work performed by employees described in subparagraph (A).

(C) In a position not covered by civil service and in the executive branch of government, but performing, supervising, or managing work similar to work performed by employees described in subparagraph (A).

(c) The election under this section shall be made in writing to each system within 90 days after the effective date of this section or within 60 days after the eligible member is notified by the system of his or her right to make the election, whichever is later. The member's election shall be effective on the day following the date on which the election is received by the Public Employees' Retirement System.

(d) If the election is made, the state service performed from and after the date of the election shall be considered creditable service for purposes of this part and the provisions of Section 22801.5 shall be applicable with respect to service performed prior to that date.

SEC. 3. Section 22717.5 is added to the Education Code, to read:

22717.5. (a) A member shall be credited at service retirement for each day of accumulated and unused leave of absence for education for which full salary is allowed on the member's final day of employment with the state.

(b) The amount of service credit to be granted shall be 0.004 years of service for each unused day of educational leave credit.

(c) When the member has made application for service retirement under this part, the employer shall certify to the board, within 30 days following the effective date of the member's service retirement, the number of days of accumulated and unused leave of absence for education that the member was entitled to on the final



day of employment. The board may assess a penalty on delinquent reports.

(d) This section shall apply to eligible state employees in state bargaining units that have agreed to this section in a memorandum of understanding, or as authorized by the Director of the Department of Personnel Administration for classifications of state employees that are excluded from the definition of “state employee” by paragraph (c) of Section 3513 of the Government Code.

(e) The provisions of this section shall be effective for eligible members who retire directly from state employment on or after January 1, 2000.

SEC. 4. Section 22801.5 is added to the Education Code, to read:

22801.5. (a) A member who elects pursuant to Section 22508.6 to have his or her state service subject to coverage by the Defined Benefit Program shall receive additional service credit for the time spent subject to coverage by the Public Employees’ Retirement System between July 1, 1991, and the effective date of the election.

(b) A member described in subdivision (a) shall pay all contributions with respect to his or her state service as a member of the Public Employees’ Retirement System at the contribution rate for additional service credit, adopted by the board as a plan amendment, in effect at the time of the election. Contributions shall be made in a lump sum or in not more than 120 monthly installments. Payment shall be made or shall commence within 120 days after the date of the election. No installment, except the final installment, shall be less than twenty-five dollars (\$25). The member shall not be credited with any service pursuant to this section until the contributions have been paid in full.

(c) If the member is employed to perform creditable service at the time of the election, the contributions shall be based upon the compensation earnable in the current school year or either of the two immediately preceding school years, whichever is highest.

(d) If the member is not employed to perform creditable service at the time of the election, the contributions shall be based upon the compensation earnable in the last school year of credited service or either of the two immediately preceding school years, whichever is highest.

(e) The total amount of contributions due from the member under subdivision (b) shall be reduced by the amount received from the Public Employees’ Retirement System pursuant to Section 20309.5 of the Government Code. Under no circumstances shall the assets received from the Public Employees’ Retirement System, pursuant to that section, be allocated or awarded to individual members or their spouses or beneficiaries.

SEC. 5. Section 18670 of the Government Code is amended to read:

18670. (a) The board may hold hearings and make investigations concerning all matters relating to the enforcement and effect of this part and rules prescribed under this part. It may inspect any state institution, office, or other place of employment affected by this part to ascertain whether this part and the board rules are obeyed.

The board shall make investigations and hold hearings at the direction of the Governor or the Legislature or upon the petition of an employee or a citizen concerning the enforcement and effect of this part and to enforce the observance of Article VII of the Constitution and of this part and the rules made under this part.

(b) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. For purposes of subdivision (a), any discipline, as defined by Section 19576.1, is not subject to either a board investigation or hearing. Board review shall be limited to acceptance or rejection of discipline imposed pursuant to Section 19576.1.

(c) This subdivision shall apply only to state employees in State Bargaining Unit 8. For the purposes of subdivision (a), any discipline, as defined by the memorandum of understanding or Section 19576.5, is not subject to either a board investigation or hearing.

(d) This subdivision shall apply only to state employees in State Bargaining Unit 11 who have been disciplined or rejected on probation for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement. For purposes of subdivision (a) and in the context of positive drug test results, any discipline, as defined by the memorandum of understanding, and rejections on probation are not subject to either a board investigation or a hearing.

SEC. 6. Section 19175 of the Government Code is amended to read:

19175. The board at the written request of a rejected probationer, filed within 15 calendar days of the effective date of rejection, may investigate with or without a hearing the reasons for rejection. After investigation, the board may do any of the following:

(a) Affirm the action of the appointing power.

(b) Modify the action of the appointing power.

(c) Restore the name of the rejected probationer to the employment list for certification to any position within the class; provided, that his or her name shall not be certified to the agency by which he or she was rejected, except with the concurrence of the appointing power of that agency.

(d) Restore him or her to the position from which he or she was rejected, but this shall be done only if the board determines, after a hearing, that there is no substantial evidence to support the reason or reasons for rejection, or that the rejection was made in fraud or bad faith. At the hearing, the rejected probationer shall have the burden

of proof. Subject to rebuttal by the rejected probationer, it shall be presumed that the rejection was free from fraud and bad faith and that the statement of reasons therefor in the notice of rejection is true.

(e) Effective January 1, 1996, this section shall not apply to state employees in State Bargaining Unit 5.

(f) Except as provided in subdivision (g), this section shall not apply to state employees in State Bargaining Unit 11 who have been rejected on probation for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement.

(g) Whenever a written request is made under this section by a probationer in State Bargaining Unit 11 who has been rejected for positive drug test results and the memorandum of understanding for employees in State Bargaining Unit 11 has expired, the state employer shall follow the appeal procedures contained in the expired memorandum of understanding for state employees in State Bargaining Unit 11 until a successor agreement is negotiated between the Department of Personnel Administration and the exclusive representative.

SEC. 7. Section 19576.6 is added to the Government Code, to read:

19576.6. This section shall apply only to state employees in State Bargaining Unit 11 who have been disciplined for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement.

(a) Notwithstanding Section 19576, the State Personnel Board shall not have the authority stated in subdivision (a) of that section.

(b) Whenever an answer is filed by an employee and the memorandum of understanding for employees in State Bargaining Unit 11 has expired, the state employer shall follow the appeal procedures contained in the expired memorandum of understanding for state employees in State Bargaining Unit 11 until a successor agreement is negotiated between the Department of Personnel Administration and the exclusive representative.

(c) Notwithstanding any other law or rule, if the provisions of this section are in conflict with the provisions of the memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 8. Section 19582 of the Government Code is amended to read:

19582. (a) Hearings may be held by the board, or by any authorized representative, but the board shall render the decision that in its judgment is just and proper.

During a hearing, after the appointing authority has completed the opening statement or the presentation of evidence, the employee, without waiving his or her right to offer evidence in the event the motion is not granted, may move for a dismissal of the charges.

If it appears that the evidence presented supports the granting of the motion as to some but not all of the issues involved in the action, the board or the authorized representative shall grant the motion as to those issues and the action shall proceed as to the issues remaining. Despite the granting of the motion, no judgment shall be entered prior to a final determination of the action on the remaining issues, and shall be subject to final review and approval by the board.

(b) If a contested case is heard by an authorized representative, he or she shall prepare a proposed decision in a form that may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the board as a public record and furnished to each party within 10 days after the proposed decision is filed with the board. The board itself may adopt the proposed decision in its entirety, may remand the proposed decision, or may reduce the adverse action set forth therein and adopt the balance of the proposed decision.

(c) If the proposed decision is not remanded or adopted as provided in subdivision (b), each party shall be notified of the action, and the board itself may decide the case upon the record, including the transcript, with or without taking any additional evidence, or may refer the case to the same or another authorized representative to take additional evidence. If the case is so assigned to an authorized representative, he or she shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the proposed decision shall be furnished to each party. The board itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present oral and written argument before the board itself. If additional oral evidence is introduced before the board itself, no board member may vote unless he or she heard the additional oral evidence.

(d) In arriving at a decision or a proposed decision, the board or its authorized representative may consider any prior suspension or suspensions of the appellant by authority of any appointing power, or any prior proceedings under this article.

(e) The decision shall be in writing and contain findings of fact and the adverse action, if any. The findings may be stated in the language of the pleadings or by reference thereto. Copies of the decision shall be served on the parties personally or by mail.



(f) This section shall not apply to minor discipline, as defined in a memorandum of understanding or by Section 19576.5, for state employees in State Bargaining Unit 8.

(g) This section shall not apply to state employees in State Bargaining Unit 11 who have been disciplined for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement.

SEC. 9. Section 19816.20 of the Government Code is amended to read:

19816.20. Notwithstanding Section 18717, this section shall apply to state employees in state bargaining units that have agreed to these provisions in a memorandum of understanding between the state employer and the recognized employee organization, as defined in Section 3513, state employees who are excluded from the definition of “state employee” in paragraph (c) of Section 3513, and officers or employees of the executive branch of state government who are not members of the civil service.

(a) The department shall determine which classes or positions meet the elements of the criteria for the state safety category of membership in the Public Employees’ Retirement System. An employee organization or employing agency requesting a determination from the department shall provide the department with information and written argument supporting the request.

(b) The department may use the determination findings in subsequent negotiations with the exclusive representatives.

(c) The department shall not approve safety membership for any class or position that has not been determined to meet all of the following criteria:

(1) In addition to the defined scope of duties assigned to the class or position, the member’s ongoing responsibility includes:

(A) The protection and safeguarding of the public and of property.

(B) The control or supervision of, or a regular, substantial contact with one of the following:

(i) Inmates or youthful offenders in adult or youth correctional facilities.

(ii) Patients in state mental facilities that house Penal Code offenders.

(iii) Clients charged with a felony who are in a locked and controlled treatment facility of a developmental center.

(2) The conditions of employment require that the member be capable of responding to emergency situations and provide a level of service to the public such that the safety of the public and of property is not jeopardized.

(d) For classes or positions that are found to meet this criteria, the department may agree to provide safety membership by a

memorandum of understanding reached pursuant to Section 3517.5 if the affected employees are subject to collective bargaining, or by departmental approval for state employees who are either excluded from the definition of “state employee” in subdivision (c) of Section 3513 or are officers or employees of the executive branch of state government who are not members of the civil service. The department shall notify the retirement system of its determination, as prescribed in Section 20405.1.

(e) The department shall provide the Legislature an annual report that lists the classes or positions which were found to be eligible for safety membership under this section.

SEC. 10. Section 19876.5 of the Government Code is amended to read:

19876.5. State employees in state bargaining units 1, 4, 15, 18, and 20 who suffer a job-related injury or illness and become eligible for vocational rehabilitation under Section 139.5 of the Labor Code on or after January 1, 1993, shall first be subject to an evaluation to determine what type of state employment can be performed. The evaluation shall include vocational rehabilitation when deemed appropriate, based on a medical evaluation and previous experience. Disability benefits shall be contingent on the employee’s agreement to cooperate and participate in a reasonable and appropriate vocational rehabilitation plan necessary to continue state employment. This section shall not apply to any job-related or job-incurred injury or illness that occurs on or after January 1, 2000.

SEC. 11. Section 20309.5 is added to the Government Code, to read:

20309.5. (a) Any person who is a member of the Defined Benefit Program of the State Teachers’ Retirement Plan and who subsequently became employed, on or after July 1, 1991, and who continues to be employed by the state to perform service that requires membership in the Public Employees’ Retirement System under Section 21071 and who meets the requirements of subdivision (b) of Section 22508.6 of the Education Code may elect to have his or her state service subject to coverage by the Defined Benefit Program of the State Teachers’ Retirement Plan and excluded from coverage by the Public Employees’ Retirement System.

(b) Upon an election being made pursuant to subdivision (a), the Public Employees’ Retirement System shall transfer to the Teachers’ Retirement Fund an amount equal to the actuarial accrued liability of the system for the service rendered by the person making the election on or after July 1, 1991, to the date of the election, inclusive. The actuarial accrued liability shall be calculated based on the actuarial assumptions of the system for the most recently completed actuarial valuation as of the date of the election.

SEC. 12. Section 20395 of the Government Code is amended to read:

20395. “State peace officer/firefighter member” means all members who are full-time permanent employees represented in Corrections Unit No. 6, Protective Services and Public Safety Unit No. 7, and Firefighters Unit No. 8 and are employed in class titles that are designated as peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code or are firefighters whose principal duties consist of active firefighting/fire suppression.

A member who is employed in a position that is reclassified from state miscellaneous to state peace officer/firefighter pursuant to this section, may make an irrevocable election in writing to remain subject to the miscellaneous service retirement benefit and the normal rate of contribution by filing a notice of the election with the board within 90 days of notification by the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21353 or 21354.1, as applicable, only for service also included in the federal system.

SEC. 13. Section 20405.1 of the Government Code is amended to read:

20405.1. Notwithstanding Section 20405, this section shall apply to state employees in state bargaining units that have agreed to these provisions in a memorandum of understanding between the state employer and the recognized employee organization, as defined in Section 3513, state employees who are excluded from the definition of “state employee” by subdivision (c) of Section 3513, and officers or employees of the executive branch of state government who are not members of the civil service.

(a) On and after the effective date of this section, state safety members shall also include officers and employees whose classifications or positions are found to meet the state safety criteria prescribed in Section 19816.20, provided the Department of Personnel Administration agrees to their inclusion. For employees covered by a collective bargaining agreement, the effective date of safety membership shall be the date on which the department and the employees’ exclusive representative reach agreement by memorandum of understanding pursuant to Section 3517.5. For employees not covered by a collective bargaining agreement, the Department of Personnel Administration shall determine the effective date of safety membership.

(b) The department shall notify the board as new classes or positions become eligible for state safety membership, as specified in subdivision (a), and specify how service prior to the effective date shall be credited.

(c) The department shall prepare and submit to the Legislature an annual report that contains the classes or positions that are eligible for state safety membership under this section.





(d) Any person designated as a state safety member pursuant to this section may elect, within 90 days of notification by the board, to remain subject to the miscellaneous or industrial service retirement benefit and contribution rate by filing an irrevocable election with the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21076, 21353, or 21354.1, as applicable, only for service also included in the federal system.

SEC. 14. Section 20407.5 is added to the Government Code, to read:

20407.5. (a) Notwithstanding Section 20407, any person designated as a state safety member pursuant to Section 20407 who elected to remain subject to the miscellaneous service retirement benefit and contribution rate as provided in that section may elect instead to be subject to the state safety service retirement benefit and contribution rate.

(b) This section shall apply to those officers and employees of the State Department of Mental Health described in Section 20407 who are represented by State Bargaining Unit 18 and who became safety members effective January 1, 1998, when the Napa State Hospital and the Metropolitan State Hospital were designated as forensic facilities.

(c) This section shall also apply to any member who is excluded from the definition of state employee in subdivision (c) of Section 3513 and who is directly associated with employees represented by State Bargaining Unit 18.

(d) The election provided under this section shall be filed with the board by the member within 90 days after notification by the board that the member has the right to elect to be subject to the state safety member service retirement formula and contribution rates. If the election is not made by the member, he or she shall remain subject to the miscellaneous service retirement benefit and contribution rate.

SEC. 15. Section 21159 of the Government Code is amended to read:

21159. (a) Notwithstanding any other provision of law, a state member shall not be retired for industrial disability for an illness or injury that occurs on or after January 1, 1993, unless the member is incapacitated for the performance of duty in any employment with the state employer and the disability is of permanent or extended and uncertain duration, as determined by the Department of Personnel Administration. This section shall only apply to state safety, state industrial, and state miscellaneous members employed in any state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section. The Director of the Department of Personnel Administration may adopt rules regarding job placement and other related activities necessary for the administration of this section and Section 21195.

(b) A state member who, because of the enactment of this section is no longer eligible to retire for industrial disability and accepts alternate employment with the state in which the compensation is less than that received in the position held at the time of the illness or injury, shall, upon certification of the Department of Personnel Administration to the board, become entitled to benefits under the partial disability retirement program set forth in Section 21160.

(c) The employee shall have the right of appeal to the Department of Personnel Administration regarding: (1) the requirement to participate or (2) the exclusion from participating in the program described in this section and Section 21160.

(d) For all other disputes relative to this section and Section 21160, the employee shall seek administrative remedy from his or her appointing power through the departmental complaint process.

(e) The appointing power of the affected employee shall reimburse the Department of Personnel Administration for any costs associated with the administration of this provision.

(f) This section shall not apply to any job-related or job-incurred illness or injury that occurs on or after January 1, 2000.

SEC. 16. Section 21160 of the Government Code is amended to read:

21160. (a) Any state member who is subject to Section 21159 and does not qualify for industrial disability retirement under this part, or is reinstated from industrial disability retirement pursuant to Section 21195, and accepts another job in state service, shall be paid a partial disability retirement program benefit payment from this system in an amount, to be calculated by the Department of Personnel Administration and certified to the board, that, when added to the salary earned by the employee in the current state position, would be equal to the state salary earned by the member at the time of becoming unable to perform the duties of his or her previous position. This supplemental payment shall not result in the member being deemed to be retired.

(b) The partial disability retirement program benefit payments made under this section shall be paid for by the state employer in the same manner as all other state retirement benefits are funded.

(c) This section shall not apply to any job-related or job-incurred illness or injury that occurs on or after January 1, 2000.

SEC. 17. Section 21161 of the Government Code is amended to read:

21161. (a) A partial disability retirement program is established by Section 21160 for state employees subject to Section 21159. The benefits paid under this program shall be paid pursuant to Sections 21159 and 21160 and shall not be considered compensation for purposes of Section 20630.

(b) This section shall not apply to any job-related or job-incurred illness or injury that occurs on or after January 1, 2000.

SEC. 18. Section 21195 of the Government Code is amended to read:

21195. (a) Notwithstanding any other section in Article 6 (commencing with Section 21150) or in this article, the Department of Personnel Administration may reinstate a person who has retired for industrial disability pursuant to Section 21410, within 12 months after the effective date of retirement, if it has identified an available position with duties that the employee is able to perform. Upon reinstatement, the person shall become entitled to benefits under the partial disability retirement program pursuant to Section 21160.

(b) This section shall not apply to any job-related or job-incurred illness or injury that occurs on or after January 1, 2000.

SEC. 19. Section 22754.2 of the Government Code, as added by Chapter 91 of the Statutes of 1998, is repealed.

SEC. 20. Section 22825.01 of the Government Code is amended to read:

22825.01. (a) As used in this section, the following definitions shall apply:

(1) A “rural area” means an area in which there is no board-approved health maintenance organization plan available for enrollment by state employees or annuitants who live in the area.

(2) “Coinsurance” means the provision of a medical plan design in which the plan or insurer and state employee or annuitant share the cost of hospital or medical expenses at a specified ratio.

(3) A “deductible” means the annual amount of out-of-pocket medical expenses that state employees or annuitants must pay before the insurer or self-funded plan begins paying for expenses.

(4) “Department” means the Department of Personnel Administration.

(5) “Program” means the Rural Health Care Equity Program.

(b) (1) The Rural Health Care Equity Program is hereby established for the purpose of funding the subsidization and reimbursement of premium costs, deductibles, coinsurance, and other out-of-pocket health care costs, which would otherwise be covered if the state employee or annuitant was enrolled in a board-approved health maintenance organization plan, paid by employees and annuitants living in rural areas, as authorized by this section. The program shall be administered by the department or by a third-party administrator approved by the department in a manner consistent with all applicable state and federal laws. The board shall determine the rural area for each subsequent fiscal year at the same meeting when the board approves premiums for health maintenance organizations.

(2) Separate accounts shall be maintained within the program for (A) employees, as defined in subdivision (c) of Section 3513; (B) excluded employees, as defined in subdivision (b) of Section 3527; and (C) annuitants as defined in subdivision (e) of Section 22754.

(c) Moneys in the Rural Health Care Equity Program shall be allocated to the separate accounts as follows:

(1) As the employer's contribution with respect to each employee, as defined in subdivision (c) of Section 3513, who lives in a rural area and who is otherwise eligible, an amount to be determined through the collective bargaining process.

(2) As the employer's contribution with respect to each excluded employee, as defined in subdivision (b) of Section 3527, who lives in a rural area and who is otherwise eligible, an amount equal to, but not to exceed, the amount given to eligible state employees, as defined in subdivision (c) of Section 3513, who live in a rural area.

(3) As the employer's contribution with respect to each annuitant, as defined in subdivision (e) of Section 22754, who lives in a rural area, is not a Medicare participant, and who is otherwise eligible, an amount not to exceed five hundred dollars (\$500) per year.

(4) As to the state's contribution with respect to each state annuitant, as defined in subdivision (e) of Section 22754 who lives in a rural area, participates in a board-approved, Medicare-coordinated health plan, participates in a board-approved health plan, and is otherwise eligible, an amount equal to the Medicare Part B premiums incurred by the annuitant, not to exceed seventy-five dollars (\$75) per month. The state shall not reimburse for penalty amounts.

(5) As to an employee who enters state service or leaves state service during a fiscal year, contributions for the employee shall be made on a pro rata basis. A similar computation shall be used for anyone entering or leaving the bargaining unit, including a person who enters the bargaining unit by promotion in mid-fiscal year.

(d) Each fund of the State Treasury, other than the General Fund, shall reimburse the General Fund for any sums allocated pursuant to subdivision (c) for employees whose compensation is paid from that fund. That reimbursement shall be accomplished using the following methodology:

(1) On or before December 1 of each year, the Department of Personnel Administration shall provide a listing of active state employees who participated in the Rural Health Care Equity Program in the immediately preceding fiscal year to each employing department.

(2) On or before January 15 of each year, every department that employed an active state employee identified by the Department of Personnel Administration as a participant in the Rural Health Care Equity Program shall provide the Department of Personnel Administration with a listing of the funds used to pay each employee's salary, along with the proportion of each active state employee's salary attributable to each fund.

(3) Using the information provided by the employing departments, the Department of Personnel Administration shall

compile a listing of Rural Health Care Equity Program payments attributable to each fund. On or before February 15 of each year, the Department of Personnel Administration shall transmit this list to the Department of Finance.

(4) The Department of Finance shall certify to the Controller the amount to be transferred from the unencumbered balance of each fund to the General Fund.

(5) The Controller shall transfer to the General Fund from the unencumbered fund balance of each impacted fund the amount specified by the Department of Finance.

(6) To ensure the equitable allocation of costs, the Director of the Department of Personnel Administration or the Director of Finance may require an audit of departmental reports.

(e) For any sums allocated pursuant to subdivision (c) for annuitants, funds, other than the General Fund, shall be charged a fair share of the state's contribution in accordance with the provisions of Article 2 (commencing with Section 11270) of Chapter 3 of Part 1 of Division 3 of Title 2. On or before July 31 of each year, the Department of Personnel Administration shall provide the Department of Finance with the total costs allocated pursuant to subdivision (c) for annuitants in the immediately preceding fiscal year. The reported costs shall not include expenses that have been incurred but not claimed as of July 31.

(f) Notwithstanding any other provision of law and subject to the availability of funds, moneys within the Rural Health Care Equity Program shall be disbursed for the benefit of an employee who lives in a rural area and who is otherwise eligible. The disbursements shall, where there is no board-approved health maintenance organization plan available in an area that is open for enrollment for the employee, (1) subsidize the preferred provider plan premiums for the employee, by an amount equal to the difference between the weighted average of board-approved health maintenance organization premiums and the lowest board-approved preferred provider plan premium available under this part and (2) reimburse the employee for a portion or all of his or her incurred deductibles, coinsurances, and other out-of-pocket health-related expenses, that would otherwise be covered if the employee were enrolled in a board-approved health maintenance organization plan.

These subsidies and reimbursements shall be provided according to a plan determined by the department, which may include, but is not limited to, a supplemental insurance plan, a medical reimbursement account, or a medical spending account plan.

(g) Notwithstanding any other provision of law and subject to the availability of funds, moneys within the Rural Health Care Equity Program shall be disbursed for the benefit of eligible annuitants, as defined in subdivision (e) of Section 22754, who live in rural areas and who are otherwise eligible. The disbursements shall, where there is

no board-approved health maintenance organization plan available and open to enrollment by the annuitant, either (1) reimburse the annuitant if he or she is not a Medicare participant, for some or all of his or her deductibles, not to exceed five hundred dollars (\$500) per fiscal year, or (2) reimburse Medicare Part B premiums incurred by the annuitant, not to exceed seventy-five dollars (\$75) per month, exclusive of penalties. These reimbursements shall be provided by the department.

The state shall not reimburse for penalty amounts.

(h) Any moneys remaining in any account of the program at the end of any fiscal year shall remain in the account for use in subsequent fiscal years until the account is terminated. Moneys remaining in any account of the program upon termination, after payment of all outstanding expenses and claims incurred prior to the date of termination, shall be deposited in the General Fund.

(i) The Legislature finds and declares that the Rural Health Care Equity Program is established for the exclusive benefit of employees, annuitants, and family members.

(j) This section shall cease to be operative on January 1, 2005, or on such earlier date as the board makes a formal determination that HMOs are no longer the most cost-effective health care plans offered by the board.

SEC. 21. Section 10295 of the Public Contract Code is amended to read:

10295. (a) All contracts entered into by any state agency for (1) the acquisition of goods or elementary school textbooks, (2) services, whether or not the services involve the furnishing or use of goods or are performed by an independent contractor, (3) the construction, alteration, improvement, repair, or maintenance of property, real or personal, or (4) the performance of work or services by the state agency for or in cooperation with any person, or public body, are void unless and until approved by the department. Every contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of the approval.

(b) This section applies to any state agency that by general or specific statute is expressly or impliedly authorized to enter into transactions referred to in this section.

(c) This section does not apply to the following:

(1) Any transaction entered into by the Trustees of the California State University or by a department under the State Contract Act or the California State University Contract Law.

(2) Any contract of a type specifically mentioned and authorized to be entered into by the Department of Transportation under Section 14035 or 14035.5 of the Government Code, Sections 99316 to 99319, inclusive, of the Public Utilities Code, or the Streets and Highways Code.

(3) Any contract entered into by the Department of Transportation that is not funded by money derived by state tax sources but, rather, is funded by money derived from federal or local tax sources.

(4) Any contract entered into by the Department of Personnel Administration for state employee benefits, occupational health and safety, training services, or combination thereof.

(5) Any contract let by the Legislature.

(6) Any contract entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

SEC. 21.5. Section 10295 of the Public Contract Code is amended to read:

10295. (a) All contracts entered into by any state agency for (1) the acquisition of goods or elementary school textbooks, (2) services, whether or not the services involve the furnishing or use of goods or are performed by an independent contractor, (3) the construction, alteration, improvement, repair, or maintenance of property, real or personal, or (4) the performance of work or services by the state agency for or in cooperation with any person, or public body, are void unless and until approved by the department. Every contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of the approval.

(b) This section applies to any state agency that by general or specific statute is expressly or impliedly authorized to enter into transactions referred to in this section.

(c) This section does not apply to the following:

(1) Any transaction entered into by the Trustees of the California State University, by the Board of Governors of the California Community Colleges, or by a department under the State Contract Act or the California State University Contract Law.

(2) Any contract of a type specifically mentioned and authorized to be entered into by the Department of Transportation under Section 14035 or 14035.5 of the Government Code, Sections 99316 to 99319, inclusive, of the Public Utilities Code, or the Streets and Highways Code.

(3) Any contract entered into by the Department of Transportation that is not funded by money derived by state tax sources but, rather, is funded by money derived from federal or local tax sources.

(4) Any contract entered into by the Department of Personnel Administration for state employee benefits, occupational health and safety, training services, or combination thereof.

(5) Any contract let by the Legislature.



(6) Any contract entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

SEC. 22. The Legislature hereby declares its intent that Sections 19876.5, 21159, 21160, 21161, and 21195 of the Government Code, as amended by this act, shall be given retroactive effect to January 1, 2000.

SEC. 23. The sum of sixty-five million four hundred fourteen thousand two hundred eighty-eight dollars (\$65,414,288) is hereby appropriated as follows:

(a) Five million dollars (\$5,000,000) from the General Fund to the Controller for allocation to the Work and Family Fund, a continuously appropriated fund, for expenditure by the Department of Personnel Administration for the purposes of establishing and maintaining work and family programs for state employees. These programs may include, but are not limited to, financial assistance to aid in the development of child care centers administered by either nonprofit corporations formed by state employees or child care providers, or to provide grants, subsidies, or both grants and subsidies for child care and elder care. Other programs may include enhancement or supplementation of existing employee assistance program services and other work and family programs.

(b) Forty-seven million six hundred thousand dollars (\$47,600,000) from unallocated special funds for expenditure in the 1999–2000 fiscal year in augmentation and for the purposes of state employee compensation as provided in Item 9800-001-0494 of Section 2.00 of the Budget Act of 1999 (Chapter 50, Statutes of 1999).

(c) Twelve million six hundred thirty-nine thousand two hundred eighty-eight dollars (\$12,639,288) from the General Fund to the Department of Personnel Administration for the purpose of funding the Rural Health Care Equity Program, as established by Section 22825.01 of the Government Code, as added by Chapter 743 of the Statutes of 1999.

The funds appropriated pursuant to this subdivision shall be used for the subsidization and reimbursement of premium costs, deductibles, coinsurance, and other out-of-pocket health care costs of active state employees and annuitants living in rural areas. The funds appropriated by this subdivision shall be available for expenditure until January 1, 2005.

(d) The sum of one hundred seventy-five thousand dollars (\$175,000) from the General Fund in augmentation of Item 8380-001-0001 of Section 2.00 of the Budget Act of 1999 (Chapter 50 of the Statutes of 1999). The funds appropriated pursuant to this subdivision shall be used to contract with a third-party administrator to provide recordkeeping services for the Rural Health Care Equity Program, as established by Section 22825.01 of the Government Code, as added by Chapter 743 of the Statutes of 1999.

SEC. 24. Section 21.5 of this bill incorporates amendments to Section 10295 of the Public Contract Code proposed by both this bill and AB 1441. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, but this bill becomes operative first, (2) each bill amends Section 10295 of the Public Contract Code, and (3) this bill is enacted after AB 1441, in which case Section 10295 of the Public Contract Code, as amended by Section 21 of this bill, shall remain operative only until the operative date of AB 1441, at which time Section 21.5 of this bill shall become operative.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the provisions of this act relating to state employees may become effective at the earliest possible time, it is necessary that this act go into immediate effect.

